



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

The tenant applies for a monetary award for the recovery of a security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”), less certain admitted amounts.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to any of the relief requested?

Background and Evidence

The rental unit is a two bedroom condominium apartment. The tenancy started in August 2013 with the applicant and his wife as tenants. The tenancy ended January 31, 2015. The rent was \$1160.00 per month, due on the first of each month in advance. The tenants paid a \$580.00 security deposit.

The landlord conducted a move out inspection on February 1st and prepared a report. It was signed by one of the tenants. The report noted as damage “Repair shelf under kitchen sink (call [tenant name redacted] before charge).”

The tenants provided a forwarding address in writing at the move out on February 1st.

The landlord contacted the tenants with an estimate for the shelf repair but the tenants did not agree to it. She had the repairs done at a cost of \$125.00. She proceeded to unilaterally deduct that amount, plus the cost for some lightbulbs (\$18.15) and a strata move in fee (\$50.00) from the deposit and, by letter dated February 22, 2015, forwarded the balance of \$386.85 to the tenants by cheque.

The cheque has been cashed.

The tenant testifies that he did not agree to be responsible for the damage under the sink when he signed the tenancy agreement and says the tenants are not responsible for it.

At this hearing the landlord attempted to present evidence about the shelf damage under the sink in an effort to justify the charge. As stated at hearing, an arbitrator does not have the power to consider a party's claim for damage unless and until that party makes a formal application for dispute resolution. The landlord is free to make that claim by application for dispute resolution after this hearing.

Analysis

The tenant admits to the \$18.15 charge for bulbs and the \$50.00 charge for the strata move-in fee.

The provision in the move-out report regarding shelf repair, whether it is an admission of liability or not (I make no finding in that regard) is not a written authorization to keep any amount from the security deposit.

Section 38 of the *Act* imposes requirements about security deposit money after the end of a tenancy where, as here, a landlord does not have the tenant's written authorization or an arbitrator's order to keep any of it.

Section 38 requires of a landlord that after the end of the tenancy and receipt of a forwarding address in writing, she must either repay the deposit money or make an application to keep and must do one of those two things within fifteen days. A landlord who fails to comply must account to the tenant for double the amount of the security deposit. The section makes no provision for extension or suspension of the fifteen day period.

Here, the fifteen day period commenced on February 1st. At that time the tenancy had ended and the landlord had the tenants' forwarding address in writing. The landlord repaid a portion of the deposit twenty two days later.

The landlord was in breach of s. 38. She is liable to account to the tenant for double the amount of the deposit remaining at the end of the tenancy. That amount is \$1160.00.

The tenant is entitled to a monetary award of \$1160.00, less the \$386.85 received, less the \$18.15 for bulbs and the \$50.00 move in fee, plus the \$50.00 filing fee for this application.

Conclusion

The tenant's application is allowed. There will be a monetary order against the landlord in the amount of \$755.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 28, 2015

Residential Tenancy Branch

